

INITIATING RESO FOR BAN ORDINANCE (w/Ordinance attached) – Item 3.10(m)

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE INITIATING, PURSUANT TO SECTION 20.120.010 OF CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, PROCEEDINGS TO AMEND TITLE 20 OF THE SAN JOSE MUNICIPAL CODE BY AMENDING SECTION 20.10.040 OF CHAPTER 20.10 TO CLARIFY THAT UNLAWFUL USES ARE NOT ALLOWED UNDER THE TITLE AND TO AMEND CHAPTER 20.80 TO ADD A NEW PART 9.5 TO EXPRESSLY BAN USES THAT INVOLVE THE CULTIVATION, DISPENSATION OR DISTRIBUTION OF A CANNIBUS PLANT FOR ANY PURPOSE, SETTING A PUBLIC HEARING FOR AUGUST 3, 2010 AT 1:30 P.M. IN CITY COUNCIL CHAMBERS, AND REFERRING SAID ORDINANCE TO THE PLANNING COMMISSION FOR ITS REVIEW AND RECOMMENDATION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. Pursuant to provisions of Chapter 20.120 of Title 20 of the San Jose Municipal Code, the Council of the City of San Jose, on its own motion, does hereby initiate proceedings to adopt that certain proposed ordinance entitled, “AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTION 20.10.040 OF CHAPTER 20.10 TO CLARIFY THAT UNLAWFUL USES ARE NOT ALLOWED UNDER THE TITLE AND TO AMEND CHAPTER 20.80 TO ADD A NEW PART 9.5 TO EXPRESSLY BAN USES THAT INVOLVE THE CULTIVATION, DISPENSATION OR DISTRIBUTION OF A CANNIBUS PLANT FOR ANY PURPOSE.”

SECTION 2. The above-mentioned ordinance, a draft of which is attached hereto as Attachment 1 and incorporated into this Resolution by this reference as if fully

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set forth herein, is hereby referred to the Planning Commission for its report, comment and recommendation pursuant to the provisions of Section 20.120.010 of Chapter 20.120 of Title 20 of the San José Municipal Code, and the City Clerk is hereby directed to send a copy of this Resolution to said Planning Commission for this purpose.

SECTION 3. August 3, 2010, at the hour of 1:30 p.m., in the Council Chambers of the Council of the City of San Jose in the City Hall of said City, is the time and place for a public hearing on the proposal to approve the above-mentioned ordinance amending Title 20 of the San José Municipal Code. The City Clerk is hereby directed to publish notice thereof as required by Chapter 20.120 of Title 20 of the San Jose Municipal Code.

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ADOPTED this day of , 2010, by the following vote:

AYES:

RD:RNG
6/15/2010

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NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

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ATTACHMENT 1

***DRAFT – FOR REFERRAL TO PLANNING COMMISSION
FOR ITS COMMENT AND RECOMMENDATION***

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND
SECTION 20.10.040 OF CHAPTER 20.10 TO CLARIFY THAT
UNLAWFUL USES ARE NOT ALLOWED UNDER THE TITLE
AND TO AMEND CHAPTER 20.80 TO ADD A NEW PART 9.5
TO EXPRESSLY BAN USES THAT INVOLVE THE
CULTIVATION, DISPENSATION OR DISTRIBUTION OF A
CANNIBUS PLANT FOR ANY PURPOSE**

WHEREAS, on June 15, 2010, the Director of Planning, Building and Code Enforcement determined, pursuant to the provisions of Title 21 of the San José Municipal Code and the provisions of the California Environmental Quality Act of 1970, together with regulatory guidelines promulgated thereunder (collectively, “CEQA”), that the approval and adoption of this Ordinance is not subject to and is exempt from CEQA pursuant to the provisions of CEQA guideline Section 15061(b)(3); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has considered and hereby approves of this exemption determination for the approval and adoption of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

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SECTION 1. Section 20.10.040 of Chapter 20.10 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.10.040 Interpretation

A. In interpreting and applying the provisions of this Title, they shall be held to be for the purpose of promoting the public safety, health, convenience, comfort, prosperity, or general welfare of the community. It is not intended by this Title to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Title imposes a greater restriction upon the use of buildings or premises or upon height or buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants, or agreements, the provisions of this Title shall govern.

B. No provision of this Title is intended to nor shall be interpreted or applied to allow a use or structure that violates federal, state or local law.

SECTION 2. Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended by adding a new Part 9.5 to be numbered and entitled and to read as follows:

**Part 9.5
BAN ON CANNIBUS USES**

20.80.750 Prohibited Uses

No person shall cultivate, dispense or distribute, nor allow or suffer the cultivation, dispensation or distribution of, any variety of cannibus plant for any reason or purpose whatsoever on any real property located in the City, either as a stand-alone activity or in combination with any other use of property. The provisions of this Section are declarative of existing law.

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PASSED FOR PUBLICATION OF TITLE this day of ,
2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk